

SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is entered into by and between Recode Health (“Subcontractor”) and Company that has entered into a Service Plan Agreement (the “Underlying Agreement”) with Subcontractor (“Company”) and is effective as of Effective Date of the Underlying Agreement. Subcontractor and Company may be referred to individually as a “Party” or, collectively, as the “Parties” in this Agreement. This Agreement is incorporated by reference into the Underlying Agreement.

RECITALS

- A. Subcontractor is providing services to Company under the Underlying Agreement and Company wishes to disclose certain information to Subcontractor pursuant to the terms of such Underlying Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. Company and Subcontractor intend to protect the privacy and provide for the security of PHI disclosed to Subcontractor pursuant to the Underlying Agreement in compliance with (i) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (the “HIPAA Final Rule”), which amended the HIPAA Privacy and Security Rules (as those terms are defined below) pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors.
- C. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule (as those terms are defined below), and the HIPAA Final Rule, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”).

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the Parties agree as follows:

1. **Definitions**

- a) **Breach.** “Breach” shall have the same meaning given to such term in 45 C.F.R. § 164.402.
- b) **Electronic Protected Health Information.** “Electronic Protected Health Information” or “Electronic PHI” shall have the same meaning as the term under the Privacy Rule and the Security Rule, including, but not limited to 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Subcontractor from or on behalf of Company.
- c) **Individual.** “Individual” shall have the same meaning as the term “individual” at 45 C.F.R. § 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- d) **Privacy Rule.** “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- e) **Protected Health Information.** “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, and any amendments thereto, as applied to the information created, received, maintained or transmitted by Subcontractor from or on behalf of Company.
- f) **Required By Law.** “Required By Law” shall have the same meaning as the term “required by law” at 45 C.F.R. § 164.103.
- g) **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

- h) Security Incident. "Security Incident" shall have the same meaning as the term "security incident" at 45 C.F.R. § 164.304.
- i) Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- j) Standards for Electronic Transactions. "Standards for Electronic Transactions" shall mean the Standards for Electronic Transactions at 45 C.F.R. Part 160, Subpart A and Part 162, Subparts I-R, as applicable.
- k) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.
- l) Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, the Security Rule and the HIPAA Final Rule, which definitions are incorporated into this Agreement by reference.

2. Relationship of Parties

In the performance of the work, duties and obligations described in this Agreement or under any other agreement between the Parties, the Parties acknowledge and agree that each Party is at all times acting and performing as an independent contractor and at no time shall the relationship between the Parties be construed as a partnership, joint venture, employment, principal/agent relationship or master/servant relationship.

3. Ownership of Protected Health Information

Subcontractor acknowledges that all right, title and interest in and to any Protected Health Information furnished to Subcontractor vests solely and exclusively with Company, Company's customers or the Individual to whom such Protected Health Information relates.

4. Permitted Uses and Disclosures of PHI

Except as otherwise limited in this Agreement:

- a) Permitted Uses by Subcontractor. Subcontractor may use Protected Health Information for the proper management and administration of Subcontractor or to carry out the legal responsibilities of Subcontractor.
- b) Uses and Disclosures of PHI Pursuant to Underlying Agreement. Subcontractor may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Company provided that such use or disclosure would not violate the Privacy Rule if done by Company. To the extent Subcontractor is carrying out one or more of Company's obligations under the Privacy Rule pursuant to the terms of the Underlying Agreement or this Agreement, Subcontractor shall comply with the requirements of the Privacy Rule that apply to Company in the performance of such obligation(s).
- c) Permitted Disclosures of PHI by Subcontractor. Subcontractor may disclose Protected Health Information in its possession for the proper management and administration of Subcontractor, provided that disclosures are Required by Law, or Subcontractor obtains reasonable assurances in writing from the third party to whom the information is disclosed that such Protected Health Information will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party (which purpose must be consistent with the limitations imposed upon Subcontractor pursuant to this Agreement), and the third party immediately notifies Subcontractor in writing of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Obligations and Activities of Subcontractor

- a) Minimum Necessary. Subcontractor shall request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and regulations promulgated thereunder.
- b) Appropriate Safeguards. Subcontractor agrees to develop, implement, maintain and use appropriate safeguards and shall, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to electronic Protected Health Information, to prevent the use or disclosure of such information other than as provided for by this Agreement or the Underlying Agreement.

- c) Mitigation. Subcontractor agrees to mitigate, to the greatest extent practicable, any harmful effect that is known to Subcontractor of a use or disclosure of Protected Health Information by Subcontractor or its agents or subcontractors that is not permitted by this Agreement of which it becomes aware.
- d) Reporting of Improper Use or Disclosure, Breach or Security Incident. Without unreasonable delay and, in any event, no more than twenty four (24) hours after discovery, Subcontractor shall notify Company of any use or disclosure of PHI not provided for by the Underlying Agreement of which it becomes aware, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, incidents that pose a risk of constituting Breaches and any Security Incident of which it becomes aware. Subcontractor shall deliver the initial notification of such Breach, in writing, which must include: a reasonably detailed description of the Breach and the steps Subcontractor is taking, and would propose, to mitigate or terminate the Breach. Furthermore, Subcontractor shall supplement the initial notification, no more than ten (10) days following discovery (or following the date additional information becomes reasonably available to Subcontractor), with information including: (i) the identification of each individual whose PHI was or is believed to have been involved; (ii) a reasonably detailed description of the types of PHI involved; (iii) all other information reasonably requested by Company, including all information necessary to enable Company to perform and document a risk assessment in accordance with 45 C.F.R. Part 164 subpart D; and (iv) all other information necessary for Company to provide notice to individuals, the U.S. Department of Health and Human Services (“HHS”) or the media, if required. Despite anything to the contrary in the preceding provisions, in Company’s sole and absolute discretion and in accordance with Company’s directions, Subcontractor shall conduct, or pay the costs of conducting, an investigation of any Breach and shall provide or pay the costs of providing, any notices required by 45 C.F.R. §§ 164.404 and 164.406.
- e) Subcontractor’s Agents. In accordance with 45 C.F.R. § 164.502 (e)(1)(ii) and 45 C.F.R. § 164.308 (b)(2), as applicable, Subcontractor shall enter into a written agreement with any agent, including a subcontractor or any individual who is not a full-time employee of Subcontractor, that creates, receives, maintains or transmits PHI on behalf of Subcontractor for services provided to Company, providing that the agent agrees in writing to restrictions and conditions that are the same as those that apply through this Agreement to Subcontractor with respect to such PHI. Subcontractor shall ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees in writing to implement reasonable and appropriate safeguards to protect such information, including, but not limited to, any such safeguards required with respect to such agent or subcontractor by the HIPAA Final Rule or the Security Rule. If an agent or subcontractor is not subject to the jurisdiction or laws of the United States, or if any use or disclosure of PHI in performing the obligations under this Agreement or the Underlying Agreement will be outside of the jurisdiction of the United States, Business Associate must first obtain Company’s prior written consent, which may be withheld in Company’s sole discretion. Upon receiving Company’s prior written consent, Subcontractor shall then require its agent or subcontractor to agree by written contract with Business Associate to be subject to the jurisdiction of the Secretary, the laws and the courts of the United States, and waive any available jurisdictional defenses that pertain to the Parties’ obligations under this Agreement, HIPAA or the HITECH Act.
- f) Access to PHI. Subcontractor agrees to provide access to Protected Health Information in a Designated Record Set to Company, pursuant to 45 C.F.R. § 164.524 within five (5) business days of Subcontractor’s receipt of a request from Company. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Subcontractor, or inquires about his or her right to access, Subcontractor shall, within five (5) business days of receipt of such request, forward it to Company. Any response to such request shall be the responsibility of Company.
- g) Amendment of PHI. Subcontractor agrees to make any amendment(s) to Protected Health Information in its possession contained in a Designated Record Set pursuant to 45 C.F.R. § 164.526 within five (5) business days of Subcontractor’s receipt of a request from Company. If an Individual makes a request for amendment of PHI pursuant to 45 C.F.R. § 164.526 directly to Subcontractor, or inquires about his or her right to amendment, Subcontractor shall, within five (5) business days of receipt of such request, forward it to Company. Any response to such request shall be the responsibility of Company.
- h) Documentation of Disclosures. Subcontractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Company to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Subcontractor shall document, at a minimum, the following information (“Disclosure

Information”): (i) the date of the disclosure; (ii) the name and, if known, the address of the recipient of the PHI; (iii) a brief description of the PHI disclosed; (iv) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (v) any additional information required under the HITECH Act and any implementing regulations.

- i) Accounting of Disclosures. Within five (5) business days (or such other date that Subcontractor and Company may reasonably agree upon) of receiving written notice from Company that Company has received a request for an accounting of disclosures of Protected Health Information, Subcontractor agrees to provide to Company information collected in accordance with Section 4(h) of this Agreement, to permit Company to make the accounting required in accordance with 45 C.F.R. § 164.528. If any Individual requests an accounting of disclosures of PHI directly from Subcontractor, Subcontractor shall, within five (5) business days of receipt thereof, forward such request to Company. Any response to such requests shall be the responsibility of Company.
- j) Governmental Access to Records. Subcontractor agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Subcontractor on behalf of Company, available to the Secretary or Company in a time and manner agreed upon with Company or designated by the Secretary for purposes of the Secretary determining compliance with the Privacy Rule and the Security Rule.
- k) Security Assessments and Audits. Subcontractor agrees to promptly complete, upon written request by Company or an Company customer or data partner, a security assessment or other security review. Additionally, no more than twice annually and during normal business hours, upon five (5) business days written notice Company shall have the right to perform a security audit (or have its third party vendor perform the security audit).
- l) Policies, Procedures and Training. Subcontractor shall develop and implement privacy and security policies and procedures as necessary and appropriate to meet its obligations under this Agreement and applicable state and federal laws, including HIPAA. Subcontractor shall train its employees and workforce members, and ensure that its agents and subcontractors train their employees and workforce members on such policies and procedures.
- m) HIPAA Final Rule Applicability. Subcontractor acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Subcontractor under the Privacy Rule and the Security Rule. To the extent not referenced or incorporated herein, requirements applicable to Subcontractor under the HIPAA Final Rule are hereby incorporated by reference into this Agreement. Subcontractor agrees, after the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule, including monitoring and complying with any amendments thereto.

6. Obligations of Company

- a) Notice of Privacy Practices. Company shall notify Subcontractor of any limitation(s) in an applicable notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Subcontractor’s use or disclosure of Protected Health Information.
- b) Notification of Changes Regarding Individual Permission. Company shall notify Subcontractor of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such change may affect Subcontractor’s permitted or required use or disclosure of Protected Health Information.
- c) Notification of Restrictions to the Use or Disclosure of PHI. Company shall notify Subcontractor of any restriction to the use and/or disclosure of Protected Health Information that Company has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Subcontractor’s use or disclosure of Protected Health Information.
- d) Permissible Requests by Company. Company shall not request Subcontractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HIPAA Final Rule if done by Company, except as permitted pursuant to the provisions of Section 4 of this Agreement.

7. **Indemnification.** The Parties agree to indemnify, defend, and hold harmless each other, their subsidiaries and affiliates, and their respective directors, officers, employees and agents, from and against any loss, claims, damages, judgments, attorneys' fees, expenses, and liabilities of any kind or nature for which either Party may become liable resulting from any claim, legal action, or proceeding arising directly or indirectly out of either Party's violation of the terms of this Agreement. In addition to any other rights available to Company under this Agreement and/or any Underlying Agreements, Subcontractor shall indemnify and hold Company harmless from and against all damages, costs, fines and penalties directly or indirectly arising from Subcontractor's breach of applicable state or federal privacy and data security laws and regulations, including HIPAA and the HITECH Act, and/or related to any Breach directly or indirectly attributable to Subcontractor including its employees, officers, directors, agents, and/or subcontractors.

8. Term and Termination

- a) **Term.** The term of this Agreement shall commence on the Effective Date which shall be no later than the earliest applicable compliance date, and shall terminate when all of the Protected Health Information provided by Company to Subcontractor, or created or received by Subcontractor on behalf of Company, is destroyed or returned to Company, or, if it is not feasible to return or destroy the Protected Health Information, Subcontractor will extend protections are extended to such information, in accordance with Section 8(c).
- b) **Termination for Cause.** Upon Company's determination that Subcontractor has violated or breached a material term of this Agreement, Company may: (i): provide notice of the violation in writing to Subcontractor that provides a reasonable opportunity for Subcontractor to cure the breach or end the violation, and terminate this Agreement if Subcontractor does not cure the breach or end the violation within the reasonable time specified by Company; or (ii) immediately terminate this Agreement if it determines that Subcontractor has breached a material term of this Agreement and cure is not reasonably possible.
- c) **Effect of Termination.**
- i) Except as provided in paragraph (ii) of this Section, upon termination of the Underlying Agreement or this Agreement, for any reason, Subcontractor shall return or destroy all Protected Health Information received from Company, or created or received by Subcontractor on behalf of Company. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Subcontractor. Subcontractor shall not retain copies of the Protected Health Information.
- ii) In the event that Subcontractor determines that returning or destroying the Protected Health Information is not feasible, Subcontractor shall provide to Company notification of the conditions that make return or destruction not feasible. Upon determination that return or destruction of Protected Health Information is not feasible in Company's sole discretion, Subcontractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as Subcontractor maintains such Protected Health Information.

9. Standards for Electronic Transactions.

- a) In connection with Subcontractor's obligations pursuant to this Agreement or the Underlying Agreement, Subcontractor agrees that if it (or an agent or subcontractor) conducts an electronic transmission for which the Secretary has established a "standard transaction" under the Standards for Electronic Transactions, Subcontractor (or its agent or subcontractor) shall comply with the requirements of the Standards for Electronic Transactions. Subcontractor specifically represents that it is capable of such compliance as of the Effective Date.
- b) Subcontractor agrees that, in connection with the transmission of standard transactions, it will not (and will not permit any agent or subcontractor with which it might contract to):
- i) change the definition, data condition, or use of a data element or segment in a standard;
- ii) add any data elements or segments to the maximum defined data set;
- iii) use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification; or

- iv) change the meaning or intent of the standard's implementation specification(s).
- c) Subcontractor understands that Company reserves the right to request an exception from the uses of a standard as permitted by 45 C.F.R. § 162.940, and, if such an exception is sought, Subcontractor agrees to participate in a test modification.
- d) Subcontractor understands and agrees that from time to time, the Secretary might modify the standard transactions now identified in 45 C.F.R. §§ 162.1101 through 162.1802. Subcontractor (and any agent or subcontractor) agrees to abide by any changes to such standard transactions that might be applicable to the Subcontractor's obligations under this Agreement or a separate underlying agreement between the Parties.

10. Miscellaneous

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule, the Security Rule or the HIPAA Final Rule means the section as in effect or as amended and for which compliance is required.
- b) Cooperation in Investigations. In addition to any damages recoverable under this Agreement, the Parties acknowledge that certain breaches or violations of this Agreement may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry. In the event Subcontractor receives a notification from or on behalf of HHS regarding a compliance review, an audit or an investigation or inquiry of any kind pertaining to the services provided under this Agreement or the Underlying Agreement, it will notify Company no more than three (3) business days following receipt of the notice.
- c) Survival. The respective rights and obligations of Subcontractor under Sections 7 and 8(c) of this Agreement shall survive the termination of the Agreement and the Underlying Agreement.
- d) Amendment. The Parties acknowledge that the foregoing provisions are designed to comply with the mandates of HIPAA. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both Parties. Notwithstanding the foregoing, the Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The Parties specifically agree to take such action as may be necessary from time to time for the Parties to comply with the requirements of HIPAA.
- e) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Company and Subcontractor to comply with HIPAA.
- f) Effect of Agreement. In the event of any inconsistency between the provisions of this Agreement and the Underlying Agreement, the provisions of the Agreement shall control. In the event of inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy Rule, the Security Rule or the HIPAA Final Rule, or their interpretation by any court or regulatory agency with authority over Company or Subcontractor, such interpretation shall control. Where provisions of this Agreement are different from those mandated in the Privacy Rule, the Security Rule or the HIPAA Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this Agreement shall control.
- g) General. This Agreement is governed by, and shall be construed in accordance with, the laws of the state that govern the Underlying Agreement. If any part of a provision of this Agreement is found to be illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement shall not be affected. All notices relating to the Parties' legal rights and remedies under this Agreement shall be provided in writing to a Party, shall be sent to its address or email address set forth in the signature block below, or to such other address or email address as may be designated by that Party by notice to the sending Party, and shall reference this Agreement. Nothing in this Agreement shall confer any right, remedy or obligation upon anyone other than Company and Subcontractor. This Agreement is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications and understandings (written and oral) regarding its subject matter.